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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,277	12/05/2000	Gary Gao	24598A	6965

22889 7590 08/27/2004

OWENS CORNING
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EXAMINER
HOFFMANN, JOHN M

ART UNIT	PAPER NUMBER
1731	

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/730,277	GAO ET AL.
	Examiner	Art Unit
	John Hoffmann	1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *5 AUgust 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 11-14* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-7 and 11-14* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Reese 4141709.

Figure 1 shows all of the claimed structures.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 6-7, 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols 4033742 in view of Flautt 5055119.

Nichols discloses the invention, but makes no mention of a gathering shoe. Figure 4 of Nichols shows the invention of bushing 14, the two different nozzles 16 and 16' where they are both downstream of the bushing and 16' (the second nozzle) being down stream of the other nozzle. Nichols indicates that the fibers are wound on collet

19 – but doesn't go into any detail. The gathering of fibers onto a collet by using a gathering shoe is conventional practice. See Flautt, col. 3 , lines 53-68. It would have been obvious to use a gathering shoe to gather the fibers onto the Nichols collet, because such is a conventional way of producing glass fibers.

Claim 2 is clearly met.

Claims 3-4: The fluid used in the structure is an intended use limitation. One could force water through the Nichols nozzles if one so chooses. This is not to be interpreted as an indication that it would be obvious to do so. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Claim 6: see Nichols, col. 8, lines 58-59.

Claims 7, and 11 are clearly met for substantially the same reasons given above.

Claim 12: See col. 6, lines18-19 of Nichols.

Claim 13 is clearly met.

Claim 14: see col.10, lines 55-56.

Claims 4-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese as applied to claim 1 above, and further in view of Haruch 6161778.

Reese discloses the invention, except for the fluid being a mixture and the air-atomizing nozzle. Haruch teaches a new and improved nozzle for cooling: col. 1, lines 11- 67. It would have been obvious to use the Haruch nozzle as the Reese nozzle for all the superior properties of the Haruch nozzle.

Response to Arguments

Applicant's arguments filed 3 August 2004 have been fully considered but they are not persuasive.

It is argued that Reese does not teach a first nozzle which directs air at the filaments. Since claim 1 is directed to an apparatus, it need not teach directing air. If one can pass a liquid through a nozzle, one can also pass a gas such as air. They are both fluids.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Whereas it is argued that it would have not been obvious to direct air – such is irrelevant because the rejection based on Reese is based on anticipation – not obviousness.

As to the Nichols rejection: it is argued that the Nichols nozzles are on opposite sides of the orifice area – and that Nichols does not have a second nozzle at a second position downstream of said first nozzle. It appears that Applicant's position is that if the two nozzles are on opposite sides of the veil of fibers, that they cannot be in a downstream relationship. There isn't any evidence or reasoning give as to why these things are mutually exclusive. Since the first nozzle is further up the process, it is upstream of the second nozzle. Although the second nozzle is only downstream by a small amount, nevertheless, it is downstream. Applicant has not given any evidence that the term "downstream" (or any other claim limitation) precludes nozzles that are in the generally opposing relationship that is shown in Nichols.

Alternatively, the Office will take the position that the Nichols nozzles are not in an opposing relationship – because they are on two different levels – one being further downstream than the other.

Examiner is unaware of any definition of "downstream" which would exclude Nichols nozzles that are on two levels and on two different sides – and yet encompass Applicant's nozzles. Neither has Applicant pointed out anything in the specification (or prior art) which shows that Nichols arrangement would be excluded by the relevant claim limitations.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Hoffmann whose telephone number is (571) 272 1191. The examiner can normally be reached on Monday through Friday, 7:00- 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve Griffin can be reached on 571-272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

8-24-04

John Hoffmann
Primary Examiner
Art Unit 1731

jmh